HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition Misc. Single No. 802 of 2024

05 November, 2026

Vijay Singh and another

--Petitioners

Versus

Budh Singh and others

--Respondents

Present:-

Mr. Reituparna Joshi, Advocate holding brief of Mr. Shivanand Bhatt, Advocate for the petitioners.

Mr. Neeraj Garg, Senior Advocate assisted by Mr. Rajendra Arya, Advocate for the respondent nos. 1 to 4.

JUDGMENT

Hon'ble Ravindra Maithani, J. (Oral)

The challenge in this petition is made to the followings:

(i) The order dated 16.11.2019 passed in OS No. 77 of 2015, Vijay Singh and another v. Budh Singh and others, by the court of Civil Judge (Sr. Division), Rishikesh, Dehradun ("the suit"), whereby the suit of the petitioners has been dismissed in non-prosecution;

(ii) The order dated 27.03.2023 passed by the court of Civil Judge (Sr. Division), Rishikesh, Dehradun whereby the restoration application 3A filed by the petitioners in the suit has been dismissed; and

(iii) The judgment and order dated 11.03.2024 passed in Civil Revision No. 14 of 2023, Vijay Singh and another v. Budh Singh and others, by the court of 1st Additional District Judge, Rishikesh, Dehradun ("the revision"), by which the revision filed by the petitioners against the order dated 27.03.2023 has been dismissed.

2. Heard learned counsel for the parties and perused the record.

3. The petitioners preferred the suit before the Civil Judge (Sr. Division), Rishikesh, Dehradun seeking permanent injunction against the respondent nos. 1 to 4. In the suit, 16.11.2019 was the date fixed. On that date, the parties did not appear and the suit was dismissed for non-appearance of the parties. Thereafter, an application was filed by the petitioners for restoration of the suit on the ground that on 16.11.2019, wife of the petitioner no. 1 suddenly fell ill, due to which they could not appear in the suit and subsequent to it, there was lockdown due to Covid-19 pandemic; hence the delay. The delay is of 8 months in filing the restoration application. The restoration application filed by the petitioners was dismissed vide order dated 27.03.2023, passed in the suit, which was affirmed in the revision.

4. Learned counsel for the petitioners submits that the petitioners did not make willful default in appearance in the suit on the date of hearing; the court below has adopted a much technical approach; the petitioners would not gain anything by not

appearing in the suit and letting the suit dismissed in default.

5. Learned Senior Counsel appearing for the respondent nos. 1 to 4 admits that after 16.11.2019, the date when the suit was dismissed in non-prosecution, in the month of March, 2020, Covid-19 pandemic had affected the working of the courts.

6. On 16.11.2019, it is not the case that the respondents did appear in the suit. The parties were not present in the court and the suit was dismissed in non-prosecution. It is pleaded case of the petitioners that wife of the petitioner no. 1 suddenly fell ill, due to which they could not appear on 16.11.2019.

7. Having considered, this Court is of the view that the petitioners ought to have been given an opportunity to appear in the suit. Therefore, the courts below ought to have allowed the restoration application filed by the petitioners in the suit and the suit ought to have been heard on its merits. Accordingly, this Court is of the view that the petition deserves to be allowed.

8. The writ petition is allowed.

9. The restoration application 3A filed by the petitioners in the suit is allowed.

10. The orders dated 16.11.2019 and 27.03.2023 passed in the suit by the court of Civil Judge (Sr. Division), Rishikesh, Dehradun, as well as the judgment and order dated 11.03.2024 passed in the revision by the court of 1st Additional District Judge, Rishikesh, Dehradun are set aside.

11. The suit is restored to its number. The parties shall appear before the trial court on 08.12.2026.

12. This Court makes it clear that the parties shall not take any unnecessary adjournments and shall cooperate in the expeditious disposal of the suit, considering that the suit pertains to the year 2015.

(Ravindra Maithani, J.)
05-11-2026

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